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Via Fax: 212 805-7924  
Honorable Sidney H. Stein  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

September 26, 2007

Re: Camacho v. the City of New York et. al.  
Docket #: 07 CV 5581 (SHS)

Dear Judge Stein:

Please accept this letter as a reply to defense counsel's letter in opposition to plaintiff's motion to quash a proposed subpoena for plaintiff's criminal history.

Defense counsel claims that the demanded information is relevant to damages as to plaintiff false arrest claim. The plaintiff continues to assert that the demanded information is overbroad and is therefore irrelevant, invasive and privileged information and better suited for an in camera inspection should the Court deem that necessary.

It is worth noting that defense counsel has demonstrated his intention in making a motion to dismiss the false arrest claim in this matter. Defense counsel raised this at the initial conference and followed up with a Rule 11 letter to my office requesting that since the plaintiff pled guilty to disorderly conduct his false arrest claim for possession of narcotics should be withdrawn. This office did not withdraw the false arrest claim as we believe it is a meritorious claim and that the plea to disorderly conduct is no bar to a false arrest claim in this case.

Given the above procedural history, it seems inappropriate for your Honor to rule that defense counsel is entitled to obtain plaintiff's criminal history if ultimately, your Honor will dismiss plaintiff's false arrest claim. It seems appropriate to delay the subpoena as to such time as the Court has made a decision on plaintiff's false arrest claim either by a motion to dismiss or in a summary judgment motion. If your Honor declines to dismiss the false arrest claim then defendant will at least have its application to obtain plaintiff's criminal history. If your Honor dismisses the false arrest claim then it appears that it is undisputed that plaintiff's criminal history, if any, is irrelevant to this action.

10/3/07  
Plt's application to quash  
the subpoena for plt's criminal  
history record is denied. The information  
sought is relevant; the question of its  
admissibility is not at issue at  
this time. So ordered.  
S. H. Stein  
J.S.D.

09/26/2007 15:44

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It should be noted that defense counsel's "authority" for the proposition that plaintiff's criminal history is relevant to his claim for emotion distress, without regard to the date of the arrest, the subject matter of the arrest, whether the arrest was sealed or not, is very weak. Arrests with nothing more are not evidence of bad acts, convictions are. Arrests carry no stigma whatsoever. Defense counsel cites several Magistrate Judge's decisions which, without citation, grant defense counsel's request. In addition, defense counsel cites a one sentence ruling from Judge Preska Richardson v. City of New York, 06 Civ. 5554 (LAP) with no reasoning or supporting facts. Lastly, defense counsel cites a First Circuit case, Udemba v. Nicoli, 237 F.3d 8 (1<sup>st</sup> Cir., 2001) which, upon close inspection, applies an analysis which would most likely lead this Court to grant plaintiff's application. (See headnote Seven)

Therefore, the undersigned requests that your Honor grant the plaintiff's motion to quash the subpoena for criminal records and in the alternative Order defense counsel not to subpoena plaintiff's criminal records up to such time as your Honor has ruled on whether plaintiff's false arrest claim may proceed.

Thank-you for your consideration.

Very Truly Yours:

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